

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

CONSUMERS POWER COMPANY,  
a Michigan corporation,  
and THE DETROIT EDISON COMPANY,  
a Michigan corporation,

Plaintiffs,

No. \_\_\_\_\_

HON. \_\_\_\_\_

v

FRANK J. KELLEY, ATTORNEY  
GENERAL, RICHARD H. AUSTIN,  
SECRETARY OF STATE, and BOARD  
OF STATE CANVASSERS,

Defendants.

\_\_\_\_\_/

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\_\_\_\_\_/

COMPLAINT FOR DECLARATORY JUDGMENT

NOW COME Plaintiffs, Consumers Power Company, and  
The Detroit Edison Company, by and through their attorneys,  
Miller, Canfield, Paddock and Stone, and complain to and  
move this Court as follows:

1. That Plaintiffs bring this action for  
declaratory relief to uphold the constitutionality of MCLA  
168.472a; MSA 6.1472(1), which the Michigan Attorney General  
has opined to be unconstitutional. (A copy of the Attorney  
General's Opinion is attached as Exhibit A.)

2. MCLA 168.472a states: "[i]t shall be  
rebuttably presumed that the signature on a petition which  
proposes an amendment to the constitution [pursuant to Const  
1963, art 12, § 2] or is to initiate legislation [pursuant

to Const 1963, art 2, § 9], is stale and void if it was made more than 180 days before the petition was filed with the office of the secretary of state."

#### JURISDICTION

3. That jurisdiction is conferred upon this Court by Const 1963, art 6, § 13, MCLA 600.601; MSA 27A.601, MCLA 600.605; MSA 27A.605, and MCR 2.605.

#### VENUE

4. Venue is properly laid in this Court pursuant to MCLA 600.1615; MSA 27A.1615.

#### PARTIES

5. The Plaintiff utilities are investor-owned, private corporations organized under the laws of the State of Michigan.

A. Plaintiff Consumers Power Company (hereinafter referred to as "Consumers") is a Michigan corporation and public utility with its principal place of business in the City of Jackson, Jackson County, Michigan. Consumers provides electricity to more than 1,300,000 residential, commercial, and industrial customers throughout Michigan, and provides natural gas to more than 1,200,000 residential, commercial, and industrial customers throughout Michigan.

B. Plaintiff The Detroit Edison Company (hereinafter referred to as "Edison") is a Michigan corporation and public utility with its principal place of

business in the City of Detroit, Wayne County, Michigan. Edison provides electricity to more than 1,700,000 residential, commercial, and industrial customers in the State of Michigan.

6. Defendant Frank J. Kelley (hereinafter referred to as "Attorney General"), is the elected Attorney General of the State of Michigan authorized to render legal opinions which are binding upon state agencies.

7. Defendant Richard H. Austin (hereinafter referred to as "Secretary"), is the elected Secretary of State of Michigan, and has supervisory control over election officials in the performance of their duties under the provisions of the Michigan Election Law, MCLA 168.1 et seq.; MSA 6.1001 et seq., (see § 21).

8. Defendant Board of State Canvassers is authorized by Const 1963, art 2, § 7, and art 12, § 2 and by § 474 of the Michigan Election Law to administer ballot question elections.

#### ALLEGATIONS

9. Const 1963, art 12 § 2, provides for a manner of amending the Constitution by petition of the qualified registered voters of this state where, among other requirements, the petition is signed by a number of registered voters equal to ten percent (10%) of the total vote cast for all candidates for governor at the last preceding general election, and the petition is filed "with the person authorized by law to receive" such at least 120 days before the election.

10. Const 1963, art 12, § 2, further provides that "[a]ny such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law."

11. Const 1963, art 12, § 2, also states "[t]he person authorized by law to receive such petition shall upon its receipt determine, as provided by law, the validity and sufficiency of the signatures on the petition . . ."

12. Pursuant to the above constitutional provisions, the Legislature enacted MCLA 168.472a; MSA 6.1472(1), to provide a manner and form for signing and circulating petitions and for determining the validity and sufficiency of the signatures on the petition.

13. The Defendant, Attorney General, has issued 1974 OAG, No. 4813, p. 171, which concludes, at p. 173, that "with regard to signatures affixed to petitions proposing amendment to the State Constitution pursuant to Const 1963, art 12 § 2, § 472a of the Michigan Election Law is unconstitutional."

14. Although an opinion of the Attorney General is not a binding upon this Court, it does command the allegiance of state agencies, including the Secretary of State and Board of State Canvassers.

15. As a result of 1974 OAG, No. 4813, which declared § 472a of the Michigan Election Law unconstitutional and unenforceable, § 472a has not been and will not be enforced by the Defendant agencies entrusted with its enforcement.

16. In 1984 Initiative Proposal C, the so-called "Voters' Choice Amendment", was initiated counting signatures obtained more than 180 days before it was filed with the Secretary, contrary to MCLA 168.472a; MSA 6.1472(1).

17. Since 1950 at least one ballot proposal or constitutional amendment has been placed on the ballot of every Michigan general election.

18. Upon information and belief, at least one initiative proposal will be placed on the 1986 ballot that will have a direct impact on the ability of the utilities to furnish services to the public at reasonable rates and to provide a reasonable return for their investors. Circulation of this proposal ("MCL Proposal"), by the Michigan Citizens' Lobby commenced in 1983.

19. On September 30, 1983, and again on April 21, 1986, the Board of State Canvassers voted to approve, as to form, MCL petitions.

20. Michigan Citizens' Lobby has publically announced its intent to file the petition with Defendant Secretary on July 7, 1986, and expects to submit more than the required 304,001 signatures, including signatures that were acquired prior to the 180-day period (January 7, 1986) of § 472a of the Michigan Election Law.

21. Defendant Board of State Canvassers must certify or reject the petition by September 5, 1986.

22. That the Michigan Citizens' Lobby has been successful in the past in placing three of its proposals on the ballot.

23. That an actual case or controversy exists for which Plaintiffs bring this action for declaratory relief to uphold the constitutionality of MCLA 168.472a; MSA 6.1472(1) and contest the conclusions of 1974 OAG No. 4813.

24. If Plaintiffs wait until the MCL Proposal is certified before bringing an action, there will not be sufficient time before the election to obtain a final judicial determination.

25. That the recent United States Sixth Circuit Court of Appeals decision in Michigan State Chamber of Commerce, et al v Austin, No. 84-1833, rel'd April 21, 1986, indicates that the approval of the MCL Proposal on April 21, 1986, in conjunction with its circulation as early as 1983 and the binding effect of 1974 OAG No. 4813 on Defendant state agencies which has resulted in the administrative abrogation of the 180-day filing requirement of § 472a of the Michigan Election Law, enhances the likelihood that the MCL Proposal will be placed on the ballot in violation of § 472a and Plaintiffs will suffer injury. (Chamber of Commerce v Austin is attached as Exhibit B.)

26. That Plaintiffs have standing to bring this action since the MCL Proposal is directed against Plaintiff utilities and affects their ability to construct and finance utility plants to meet the future needs of the State for electrical energy.

27. The Legislature, pursuant to constitutional principles, is authorized to safeguard the right to initiative, prevent fraud and abuse, assure the validity of signatures, and provide greater certainty that persons signing the petition are still registered voters of the state.

28. The 180-day rule obviates the problem of inadvertent duplicate signatures attendant to any petition circulated over a long period of time.

29. The 180-day rule increases the likelihood that the voters signing the petition are still residents of the state.

30. The 180-day rule ensures that the petition reflects the will of the people signing it in that, over a longer period of time, intervening acts of the Legislature

or agencies of the executive branch may result in the desired action being taken other than by constitutional amendment with the result that the petition is no longer representative of the will of the persons signing it.


31. Section 472a represents a valid exercise of legislative authority.

WHEREFORE, Plaintiff's request that this court uphold the constitutionality of MCLA 168.472a; MSA 6.1472(1) under Const 1963, art 12, § 2.

Respectfully submitted,

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MILLER, CANFIELD, PADDOCK AND STONE